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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
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11 ETOUCH LV, LLC,
12 Plaintiff(s),

13 v.

14 ETOUCH MENU, INC., et al.,
15 Defendant(s).

Case No.: 2:18-cv-02066-JCM-NJK

Order

[Docket No. 48]

16 The Federal Rules of Evidence already establish the effect of intentional and unintentional
17 disclosure of materials subject to the attorney-client privilege and work product protection. Fed.
18 R. Evid. 502(a)-(b). The Federal Rules of Evidence also already provide some procedures for
19 trying to rectify an inadvertent disclosure. *See* Fed. R. Evid. 502(b) (incorporating Fed. R. Civ. P.
20 26(b)(5)(B)).

21 In addition to the above defaults, parties are permitted to bind themselves to an agreement
22 on the effect of disclosure of documents that are subject to attorney-client privilege or work
23 product protection. Fed. R. Evid. 502(e). In this way, Rule 502(e) simply “codifies the well-
24 established proposition that parties can enter into an agreement to limit the effect of waiver.” Fed.
25 R. Evid. 502(e), Advisory Committee Notes (2007); *see also* Fed. R. Civ. P. 29(b) (parties may
26 stipulate to discovery procedures). By contrast, if a court enters an order adopting such an
27 agreement pursuant to Rule 502(d) of the Federal Rules of Evidence, that “order binds the world,
28 including parties in state or federal proceedings even though they were not present before the

1 court.” 23A Wright & Graham, FEDERAL PRACTICE AND PROCEDURE, § 5446, p. 298 (2018).
2 Given its sweeping scope, “courts ought not lightly enter an order that purports to bind the world.”
3 *Id.* at p. 300-01.

4 Pending before the Court is a stipulation by the parties for a Rule 502(d) order that would
5 govern waiver or forfeiture “in this or any other action.” Docket No. 48 at 2. The stipulation
6 provides no explanation as to why an order is necessary that binds the world, rather than the parties
7 agreeing to bind one another without issuance of a court order, as allowed through Rule 502(e).
8 The stipulation also provides no explanation why any change is necessary from the existing default
9 provisions of Rule 502(a) and (b).¹ Without any such explanation, the Court declines to enter such
10 an order.

11 Accordingly, the stipulation is DENIED without prejudice. Any renewed request must
12 provide a well-developed discussion as to why a Court order is being requested and why it should
13 be provided.

14 IT IS SO ORDERED.

15 Dated: April 25, 2019

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19 Nancy J. Koppe
20 United States Magistrate Judge
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26 ¹ The Court does not address the merits of the stipulated order, except to note that the
27 parties seek an order excepting this case from the requirement that they take reasonable steps to
28 prevent the disclosure of material that is attorney-client privileged or work product protected. *See*
Docket No. 48 at 3 (seeking an order making Rule 502(b)(2) inapplicable). No explanation is
provided why the parties should not be required to take reasonable precautions against disclosure.